and not left to conjecture. *Wood et al.* v. *Babbitt et al.* (1907), — C. C. D., N. J. —, 149 Fed. Rep. 818.

This rule has been clearly established in New Jersey. *Conover* v. *Van Mater,* 18 N. J. Eq. 481; *Taylor* v. *Morris,* 22 N. J. Eq. 606; *Berdan* v. *School Dist. No. 38,* 47 N. J. Eq. 8. But it is evident that the courts do not mean by this expression that the same degree of proof is required as in criminal cases, *Wheatley* v. *Waldo,* 36 Vt. 237; and it is submitted that the general rule of evidence in other civil cases should be applied to actions in which the existence of usury is in question, either as a defense or as a ground for affirmative relief, and the party alleging usury should only be required to prove its existence by a preponderance of the evidence. *Lukens* v. *Hazlett,* 37 Minn. 441; *Nunn* v. *Bird,* 36 Ore. 515; *Gantzer* v. *Schmeltz,* 206 Ill. 560; *In re Samuel Wilde's Sons,* 133 Fed. 562. And that such would seem to be what is meant by the New York and other courts, *Rosenstein* v. *Fox,* 150 N. Y. 354; *White* v. *Benjamin,* 138 N. Y. 623, when they say that all the facts constituting usury must be proved with reasonable certainty and by clear and satisfactory evidence, by the party pleading it. See *In re Samuel Wilde's Sons, supra.*

CARRIERS—FREIGHT ELEVATORS AS CARRIERS OF PASSENGERS.—Defendants were owners of a large office building containing six passenger elevators and one freight elevator, the latter being used for the purpose of transporting the effects of tenants. All passengers and workmen about the building, customarily used the passenger elevators. Plaintiff was a workman in the employ of a tenant and was engaged in removing goods from an office in the building. While so engaged, he was attending certain freight on the elevator, when, through the negligence of the operator and the improper construction of the elevator, he was severely injured. There was evidence of a custom of persons handling freight to ride on this elevator. *Held,* that the relation of common carrier and passenger existed, and that the defendants were liable for injuries sustained through the negligence of the elevator operator. *Orcutt* v. *Century Building Co. et al.* (1906), — Mo. —, 99 S. W. Rep. 1062.

The law is fairly well settled as to the liability of owners of passenger elevators and by the great weight of authority they are held to the liability of common carries of passengers. See 4 MICHIGAN LAW REV. 149, 150. In I HUTCHINSON, CARRIERS, (3rd Ed.) 93, the author says, "the owners and managers of passenger elevators although spoken of by some courts as common carriers of passengers, cannot properly be so classed. Nevertheless, with reference to the safety of their passengers, the law has imposed upon the proprietors of passenger elevators, duties precisely similar to those exacted of passenger carriers by railroad. The law, therefore, justly holds that while the owners of passenger elevators are not insurers of the safety of their passengers that they are bound to exercise in their behalf the highest degree of skill and forethought." The cases involving the liability of owners of freight elevators in this respect are not very numerous, and the majority of these cases have been decided on grounds which did not touch

the question of a common carrier liability. Thus in *O'Brien* v. *Western Steel Co.*, 100 Mo. 182, and in *Wise* v. *Ackerman*, 76 Md. 375, the persons injured were on the elevator only under a mere implied license and for their own pleasure or convenience. In *McCarthy* v. *Foster*, 156 Mass. 511, and in *Snyder* v. *Railroad Co.*, 42 La. Ann. 302, the persons injured were on the elevators in the face of orders and notices forbidding their riding thereon. In *Amerine* v. *Porteus*, 105 Mich. 347, and in *Hansen* v. *State Bank Building Co.*, 100 Iowa 672, there were both passenger and freight elevators and the persons injured used the freight elevators without invitation to do so. In the last case it is said, "This is a case in which a person with a safe and convenient way provided for him, without permission, took an unsafe one because of which he was injured." In all these cases recovery was denied. However, *Springer* v. *Ford*, 189 Ills. 430, involving facts almost identical with those of the principal case, holds the owner liable. After discussing the liability of owners of passenger elevators, the court says, "There is no reason in principle why the analogy held to exist between passenger and freight trains, as common carriers, does not exist between passenger and freight elevators in case where the owners of freight elevators permit the carriage of passengers thereon for hire. The proprietor of an elevator run for the use of the tenants of an office building is a carrier of passengers for hire." *Beidler* v. *Branshaw*, 200 Ill. 425, reiterates this doctrine but on the facts of the case refused recovery because of contributory negligence on the part of plaintiff. The principles evolved from these cases seem to bear out properly the analogy as to railroads and is a proof of the adaptability of common law doctrines to modern problems as they arise through the changes due to modern science and improvement.

CARRIERS OF PASSENGERS—SERVANTS—COMMUNICATION OF DISEASE.—Defendant's ticket agent, Bridges, was affected with smallpox of which fact he had knowledge. He remained on duty, however, and communicated the disease to plaintiff as the latter was purchasing tickets of the said agent. *Held*, that the defendant is liable for the consequential damages to plaintiff. *Missouri, K. & T. Ry. Co. of Texas* v. *Raney* (1907), — Tex. Civ. App. —, 99 S. W. Rep. 589.

This case is of some novelty but very important, in its application, to the safety of travelers. The only case which has been found involving similar facts is *Long* v. *The Chicago, Kansas & Western Railroad Co.* (1892), 48 Kans. 28, 15 L. R. A. 319, 30 Am. St. Rep. 271, commented upon in the principal case. In that case, as here, plaintiff while purchasing tickets was infected with smallpox communicated by the agent. But it was held that in that case that defendant was not liable. The decision turned on the knowledge of the carrier and the court held that actual knowledge or proof of scienter was necessary, saying, "The negligent or accidental act, if any, of the agent in imparting a contagious disease to Long, the purchaser of the railroad ticket, was not within the scope of his authority so as to charge the company, his master. The sickness of an agent with a contagious disease cannot be presumed to be authorized or directed by the master and is not an